

SENATE BILL NO. 193

INTRODUCED BY G. VUCKOVICH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MEDICAL MARIJUANA ACT; REQUIRING
5 STATEMENTS BY PHYSICIANS PROVIDING WRITTEN CERTIFICATION; REQUIRING NONDIVERSION
6 STATEMENTS FROM INDIVIDUALS APPLYING FOR REGISTRY IDENTIFICATION CARDS; REQUIRING
7 MONTANA RESIDENCY; ESTABLISHING APPLICATION AND RENEWAL FEES; ESTABLISHING PENALTIES;
8 REVISING LIMITS ON POSSESSION AND DISTRIBUTION OF USABLE MARIJUANA; PROHIBITING
9 SMOKING IN PUBLIC PLACES; AMENDING SECTIONS 50-46-102, 50-46-103, 50-46-201, 50-46-205, AND
10 50-46-210, MCA; AND PROVIDING AN EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 50-46-102, MCA, is amended to read:
15 **"50-46-102. Definitions.** As used in this chapter, the following definitions apply:
16 (1) (a) "Caregiver" means ~~an individual~~, a Montana resident 18 years of age or older who has agreed
17 to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana.
18 A qualifying patient may have only one caregiver at any one time.
19 (b) The term does not include the qualifying patient's physician.
20 (2) "Debilitating medical condition" means:
21 (a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency
22 syndrome, or the treatment of these conditions;
23 (b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of
24 the following:
25 (i) cachexia or wasting syndrome;
26 (ii) severe or chronic pain;
27 (iii) severe nausea;
28 (iv) seizures, including but not limited to seizures caused by epilepsy; or
29 (v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis
30 or Crohn's disease; or

- 1 (c) any other medical condition or treatment for a medical condition adopted by the department by rule.
- 2 (3) "Department" means the department of public health and human services.
- 3 (4) "Enclosed locked facility" means a closet, room, greenhouse, or other enclosed area with four walls
 4 and a roof and equipped with locks or other security devices in order to prohibit access to anyone who does not
 5 hold a valid registry identification card.
- 6 ~~(4)~~(5) "Marijuana" has the meaning provided in 50-32-101.
- 7 ~~(5)~~(6) "Medical use" means:
- 8 (a) the acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of marijuana
 9 or paraphernalia by a qualifying patient or a caregiver relating to the consumption of marijuana to alleviate the
 10 symptoms or effects of a qualifying patient's debilitating medical condition;
- 11 (b) the use of marijuana or paraphernalia by a qualifying patient to alleviate the symptoms or effects of
 12 the patient's debilitating medical condition; or
- 13 (c) the use of paraphernalia by a caregiver for the cultivation, manufacture, delivery, transfer, or
 14 transportation of marijuana for use by a qualifying patient.
- 15 ~~(6)~~(7) "Paraphernalia" has the meaning provided in 45-10-101.
- 16 ~~(7)~~(8) "Physician" means a person who is licensed under Title 37, chapter 3.
- 17 ~~(8)~~(9) "Qualifying patient" means a ~~person~~ Montana resident who has been diagnosed by a physician
 18 as having a debilitating medical condition.
- 19 ~~(9)~~(10) "Registry identification card" means a document issued by the department that identifies a person
 20 as a qualifying patient or caregiver.
- 21 (11) (a) "Resident" means a person who meets the requirements of 1-1-215.
- 22 (b) A person is not considered a resident for the purposes of this chapter if the person:
- 23 (i) claims residence in another state or country for any purpose; or
- 24 (ii) is an absentee property owner paying property tax on property in Montana.
- 25 ~~(10)~~(12) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or
 26 preparation of marijuana.
- 27 (b) The term does not include the seeds, stalks, and roots of the plant.
- 28 ~~(11)~~(13) "Written certification" means ~~a qualifying patient's medical records or~~ a statement signed by a
 29 physician stating that in the physician's professional opinion, after having completed a full assessment of the
 30 qualifying patient's medical history and current medical condition made in the course of a bona fide

1 physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits
2 of the medical use of marijuana would likely outweigh the health risks for the qualifying patient."

3

4 **Section 2.** Section 50-46-103, MCA, is amended to read:

5 **"50-46-103. Procedures -- minors -- confidentiality -- report to legislature.** (1) The department shall
6 establish and maintain a program for the issuance of registry identification cards to ~~persons~~ Montana residents
7 who meet the requirements of this chapter.

8 (2) Except as provided in ~~subsection (3)~~ subsections (3) and (4), the department shall issue a registry
9 identification card to a qualifying patient who submits the following, in accordance with department rules:

10 (a) written certification obtained from a physician within 90 days of the date of the application that the
11 person is a qualifying patient;

12 (b) proof as required by the department by rule that the person is a Montana resident;

13 ~~(b)(c)~~ (c) an application or renewal fee of \$150;

14 ~~(e)(d)~~ (d) the name, address, and date of birth of the qualifying patient;

15 ~~(d)(e)~~ (e) the name, address, and telephone number of the qualifying patient's physician; and

16 ~~(e)(f)~~ (f) the name, address, and date of birth of the qualifying patient's caregiver, if any;

17 (g) a signed statement on a form prescribed by the department pledging not to divert marijuana to anyone
18 who is not allowed to possess marijuana pursuant to this chapter; and

19 (h) the physician statements required under [section 3].

20 (3) The department shall issue a registry identification card to a minor if the minor's custodial parent or
21 legal guardian with responsibility for health care decisions:

22 (a) submits the materials required under subsection (2) are submitted and the minor's custodial parent
23 or legal guardian with responsibility for health care decisions;

24 (b) provides proof of legal guardianship and responsibility for health care decisions if the person is
25 submitting an application as the minor's legal guardian with responsibility for health care decisions; and

26 (c) signs and submits a written statement that:

27 ~~(a)(i)~~ (i) the minor's physician has two physicians have explained to the minor and to the minor's custodial
28 parent or legal guardian with responsibility for health care decisions the potential risks and benefits of the medical
29 use of marijuana; and

30 ~~(b)(ii)~~ (ii) the minor's custodial parent or legal guardian with responsibility for health care decisions:

- 1 ~~(i)~~(A) consents to the medical use of marijuana by the minor;
- 2 ~~(ii)~~(B) agrees to serve as the minor's caregiver; ~~and~~
- 3 ~~(iii)~~(C) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use
- 4 of marijuana by the minor; and
- 5 (D) pledges, on a form prescribed by the department, not to divert marijuana to anyone who is not allowed
- 6 to possess marijuana pursuant to this chapter.
- 7 (4) The application for a minor must include written certification and the statements required under
- 8 [section 3] from:
- 9 (a) a physician who has a physician-patient relationship with the minor and is recommending marijuana
- 10 for medical use; and
- 11 (b) a second physician who has conducted a comprehensive review of the minor's medical record as
- 12 maintained by the treating physician and who is recommending marijuana for medical use by the minor.
- 13 ~~(4)~~(5) (a) The department shall issue a registry identification card to the caregiver who is named in a
- 14 qualifying patient's approved application if the caregiver submits:
- 15 (i) an application or renewal fee of \$200;
- 16 (ii) proof as required by the department by rule that the person is a Montana resident;
- 17 (iii) fingerprints to facilitate a fingerprint and background check by the department of justice and the
- 18 federal bureau of investigation;
- 19 (iv) a statement on a form prescribed by the department pledging not to divert marijuana to anyone who
- 20 is not allowed to possess marijuana pursuant to this chapter; and
- 21 (v) signs a signed statement:
- 22 ~~(i)~~(A) agreeing to provide marijuana only to qualifying patients who have named the applicant as
- 23 caregiver; and
- 24 ~~(ii)~~(B) acknowledging that possession of the registry identification card does not allow the caregiver to
- 25 engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing,
- 26 delivering, transferring, or transporting marijuana for medical use by a qualifying patient.
- 27 (b) (i) An applicant who has previously submitted fingerprints for state licensing purposes may request
- 28 that the fingerprints on file be used.
- 29 (ii) The department may acquire a name-based criminal history record check for an applicant who has
- 30 twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

1 ~~(c)~~ (i) The Except as provided in subsection (5)(c)(ii), the department may not issue a registry
 2 identification card to a proposed caregiver who has previously been convicted ~~of a~~ in any jurisdiction of a crime
 3 classified as a:

4 (A) felony drug offense; or

5 (B) crime of violence as defined in 46-18-104.

6 (ii) The department shall issue a card if the applicant completed the sentence for the offense 10 or more
 7 years ago, including any period of probation or supervised release.

8 ~~(e)~~(d) A caregiver may receive reasonable compensation for services provided to assist with a qualifying
 9 patient's medical use of marijuana.

10 ~~(5)~~(6) (a) The department shall verify the information contained in an application or renewal submitted
 11 pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the
 12 application or renewal.

13 (b) The department may deny an application or renewal only if the applicant did not provide the
 14 information required pursuant to this section, the department determines that the information was falsified, ~~or~~ the
 15 applicant is not qualified to receive a registry identification card under the provisions of this chapter, or a registry
 16 identification card issued to the applicant previously was revoked for a violation of this chapter. Rejection of an
 17 application or renewal is considered a final department action, subject to judicial review.

18 ~~(6)~~(7) The department shall issue a registry identification card within 5 days of approving an application
 19 or renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must
 20 state:

21 (a) the name, address, and date of birth of the qualifying patient;

22 (b) the name, address, and date of birth of the qualifying patient's caregiver, if any;

23 (c) the date of issuance and expiration date of the registry identification card; and

24 (d) other information that the department may specify by rule.

25 ~~(7)~~(8) (a) A person who has been issued a registry identification card shall notify the department of any
 26 change in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying
 27 patient's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the
 28 department, the registry identification card is void.

29 (b) A person who violates this subsection (8) is subject to a fine of \$150.

30 (9) If a physician who provided written certification for a person notifies the department that the person's

1 debilitating medical condition no longer exists, the department shall immediately revoke the person's registry
 2 identification card and notify the person and the person's caregiver, if any.

3 (10) The department shall revoke the registry identification card of a person who sells or otherwise diverts
 4 marijuana to anyone who is not authorized to possess marijuana under this chapter. The person is subject to all
 5 other penalties for unauthorized sale or diversion of marijuana.

6 (11) The department may revoke the registry identification card of a person who knowingly violates any
 7 provision of this chapter. The person is subject to other applicable civil or criminal penalties for the violation.

8 ~~(8)~~(12) The department shall maintain a confidential list of the persons to whom the department has
 9 issued registry identification cards. Individual names and other identifying information on the list must be
 10 confidential and are not subject to disclosure, except to:

11 (a) authorized employees of the department as necessary to perform official duties of the department;
 12 or

13 (b) authorized employees of state or local law enforcement agencies, only as necessary to verify that
 14 a person is a lawful possessor of a registry identification card.

15 ~~(9)~~(13) The department shall report annually to the legislature the number of applications for registry
 16 identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating
 17 medical conditions of the qualifying patients, the number of registry identification cards revoked, ~~and~~ the number
 18 of physicians providing written certification for qualifying patients, the amount of money raised by application and
 19 renewal fees, and the amount of excess fees deposited in the general fund pursuant to [section 4]. The
 20 department may not provide any identifying information of qualifying patients, caregivers, or physicians."
 21

22 NEW SECTION. Section 3. Written certification -- accompanying statements. (1) The written
 23 certification provided by a physician must be made on a form prescribed by the department and signed and dated
 24 by the physician. The form must include:

25 (a) the physician's name, license number, office address, and telephone number on file with the board
 26 of medical examiners and the physician's e-mail address; and

27 (b) the qualifying patient's name, date of birth, and debilitating medical condition.

28 (2) A physician who is providing written certification for a qualifying patient 18 years of age or older or
 29 who is the physician with whom a minor applying for a registry identification card has a physician-patient
 30 relationship shall provide:

- 1 (a) a statement initialed by the physician that the physician:
2 (i) has a professional relationship with the qualifying patient that has existed for at least 1 year and has
3 included at least four visits at which the patient's debilitating medical condition was reviewed or assessed;
4 (ii) has assumed primary responsibility for providing management and routine care of the patient's
5 debilitating medical condition after conducting a comprehensive medical history and physical examination that
6 included a personal review of any medical records maintained by other treating physicians and that may have
7 included the patient's reaction and response to conventional medical therapies;
8 (iii) has reviewed all prescription and nonprescription medications and supplements used by the qualifying
9 patient and has considered the potential drug interaction with marijuana;
10 (iv) has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient;
11 and
12 (v) plans to continue to assess the patient and the patient's medical use of marijuana during the course
13 of the physician-patient relationship;
14 (b) a statement that in the physician's professional opinion the potential benefits of the medical use of
15 marijuana would likely outweigh the health risks for the qualifying patient; and
16 (c) an attestation that the information provided in the written certification and accompanying statements
17 is true and correct.

18 (3) A physician who is the second physician recommending marijuana for medical use by a minor shall
19 submit:

- 20 (a) a statement initialed by the physician that the physician conducted a comprehensive review of the
21 minor's medical records as maintained by the treating physician;
22 (b) a statement that in the physician's professional opinion, the potential benefits of the medical use of
23 marijuana would likely outweigh the health risks for the minor; and
24 (c) an attestation that the information provided in the written certification and accompanying statements
25 is true and correct.

26
27 **NEW SECTION. Section 4. Special revenue account.** (1) There is an account in the state special
28 revenue fund to the credit of the department for use in administering this chapter. The account consists of money
29 deposited into the account from application and renewal fees, penalties, and any other source. Interest on the
30 account must be deposited into the account and used to sustain the account.

1 (2) Money remaining in the account at the end of the fiscal year must be transferred to the general fund.

2

3 **Section 5.** Section 50-46-201, MCA, is amended to read:

4 **"50-46-201. Medical use of marijuana -- legal protections -- limits on amount -- presumption of**
 5 **medical use.** (1) A person who possesses a registry identification card issued pursuant to 50-46-103 may not
 6 be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited
 7 to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry,
 8 if:

9 (a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers,
 10 or transports marijuana not in excess of the amounts allowed in subsection (2); or

11 (b) the qualifying patient uses marijuana for medical use.

12 (2) (a) A qualifying patient and that qualifying patient's caregiver may not possess more than six
 13 marijuana plants and ~~four ounce~~ 2.5 ounces of usable marijuana each.

14 (b) Plants grown for medical use by a patient or caregiver must be kept in an enclosed locked facility
 15 unless the patient or caregiver is moving.

16 (c) A caregiver may provide a patient with no more than 2.5 ounces of marijuana in a 14-day period. The
 17 caregiver shall maintain records of the amount of usable marijuana provided to each of the caregiver's patients
 18 and make the records available to the department or a state or local law enforcement agency upon request.

19 (3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the
 20 qualifying patient or caregiver:

21 (i) is in possession of a registry identification card; and

22 (ii) is in possession of an amount of marijuana that does not exceed the amount permitted under
 23 subsection (2).

24 (b) The presumption may be rebutted by evidence that the possession of marijuana was not for the
 25 purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

26 (4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or
 27 privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the
 28 department of labor and industry, for providing written certification for the medical use of marijuana to qualifying
 29 patients.

30 (5) An interest in or right to property that is possessed, owned, or used in connection with the medical

1 use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for
2 the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

3 (6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as
4 provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity
5 of the medical use of marijuana as permitted under this chapter.

6 (7) Possession of or application for a registry identification card does not alone constitute probable cause
7 to search the person or property of the person possessing or applying for the registry identification card or
8 otherwise subject the person or property of the person possessing or applying for the card to inspection by any
9 governmental agency, including a law enforcement agency.

10 (8) A registry identification card or its equivalent issued by another state government to permit the
11 medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical
12 use of marijuana has the same force and effect as a registry identification card issued by the department."
13

14 **Section 6.** Section 50-46-205, MCA, is amended to read:

15 **"50-46-205. Limitations of Medical Marijuana Act.** (1) This chapter does not permit:

16 (a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or
17 motorboat while under the influence of marijuana;

18 (b) any person to undertake any task under the influence of marijuana that would constitute negligence
19 or professional malpractice;

20 ~~(b)(c)~~ the use of marijuana by a caregiver; or

21 ~~(e)(d)~~ the ~~smoking~~ possession or medical use of marijuana by a qualifying patient:

22 (i) in a school bus ~~or other form of public transportation;~~

23 (ii) on any school grounds; or

24 (iii) in any correctional facility; or

25 ~~(iv)(e) at any public park, public beach, public recreation center, or youth center.~~ the smoking of
26 marijuana by a person with a registry identification card:

27 (i) on any form of public transportation; or

28 (ii) in any public place.

29 (2) Nothing in this chapter may be construed to require:

30 (a) a government medical assistance program or private health insurer to reimburse a person for costs

1 associated with the medical use of marijuana; or

2 (b) a person or commercial establishment as defined in 75-5-903 to allow a guest, client, customer, or
 3 other visitor to use marijuana for medical use on the person's or establishment's property; or

4 (b)(c) an employer to accommodate the medical use of marijuana in any workplace or to allow an
 5 employee to work while under the influence of marijuana. A person with a valid registry identification card is not
 6 considered to be under the influence of marijuana solely because of the presence of metabolites or components
 7 of marijuana that appear in insufficient concentration to cause impairment.

8 (3) Nothing in this chapter prohibits an employer from disciplining an employee for:

9 (a) the medical use of marijuana in the workplace; or

10 (b) working while under the influence of marijuana.

11 (4) Nothing in this chapter may be construed to allow a caregiver to use marijuana or to prevent
 12 criminal prosecution of a caregiver who uses marijuana or paraphernalia for the caregiver's personal use."

13

14 **Section 7.** Section 50-46-210, MCA, is amended to read:

15 **"50-46-210. Rulemaking -- fees.** (1) The department shall adopt rules necessary for the implementation
 16 and administration of this chapter. The rules must address include but are not limited to:

17 (a) the manner in which the department will consider application for and renewals of registry identification
 18 cards for qualifying patients and caregivers. ~~The department's rules must establish application and renewal fees~~
 19 ~~that generate revenue sufficient to offset all expenses of implementing and administering this chapter. The~~
 20 ~~department may vary the application and renewal fees along a sliding scale that accounts for a qualifying patient's~~
 21 ~~income;~~

22 (b) the forms to be developed pursuant to this chapter;

23 (c) the acceptable forms of proof that a person is a Montana resident; and

24 (d) the acceptable forms of proof of legal guardianship and responsibility for health care decisions.

25 (2) If the license fees, renewal fees, and penalties provided for in this chapter are insufficient to pay for
 26 the department's cost of administering the provisions of this chapter, the department may adopt rules increasing
 27 the fees to an amount that will pay the department's costs."

28

29 **NEW SECTION. Section 8. Codification instruction.** [Sections 3 and 4] are intended to be codified
 30 as an integral part of Title 50, chapter 46, part 1, and the provisions of Title 50, chapter 46, apply to [sections 3

1 and 4].

2

3 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2011.

4 - END -